

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:10-CR-365 JCM (PAL)

Plaintiff(s),

ORDER

v.

BRAD FUSSELL

Defendant(s).

Presently before the court is the government's motion to stay briefing until 30 days after counsel provides affidavit (doc. # 200), and the government's motion to waive attorney-client privilege (doc. # 201).

Petitioner filed a motion to vacate under 28 U.S.C. § 2255. (Doc. # 195). In a minute order, this court ordered the government to respond by March 10, 2015. (Doc. # 198). The government timely filed its motion to stay briefing until 30 days after counsel provides affidavit. (Doc. # 200).

Local rule 6-1 permits an extension of time for good cause. The government cites the need to obtain from Paul Riddle, Esq., a sworn affidavit. (*See id.*). Mr. Riddle represented petitioner in the criminal case, and petitioner has made ineffective assistance of counsel allegations regarding the representation provided by Mr. Riddle. (*See id.*). The court finds good cause to grant an extension. The court will grant the government fourteen days (not thirty) to respond.

The government also seeks a waiver of the attorney-client privilege between petitioner and Mr. Riddle. A habeas petitioner severs the attorney-client privilege when the petitioner files a § 2255 petition asserting ineffective assistance of counsel. *Bittaker v. Woodford*, 331 F.3d 715, 716-17 (9th Cir. 2003) (“It has long been the rule in the federal courts that, where a habeas petitioner

1 raises a claim of ineffective assistance of counsel, he waives the attorney-client privilege as to all
2 communications with his allegedly ineffective lawyer.”). The court waives the attorney-client
3 privilege between petitioner and Mr. Riddle.

4 Accordingly,

5 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the government’s motion
6 to stay briefing until 30 days after counsel provides affidavit (doc. # 200) be, and the same hereby
7 is, GRANTED in part, DENIED in part.

8 IT IS FURTHER ORDERED that Mr. Paul Riddle, Esq. shall execute a sworn affidavit
9 within seven days of the release of this order. The government shall have fourteen days from
10 receipt of Mr. Riddle’s affidavit to file its response.

11 IT IS FURTHER ORDERED ADJUDGED AND DECREED that the government’s
12 motion to waive attorney-client privilege (doc. # 201) be, and the same hereby is, GRANTED.

13 DATED March 9, 2015.

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15 UNITED STATES DISTRICT JUDGE

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